POLICE DEPARTMENT

December 17, 2021

In the Matter of the Charges and Specifications	:	Case No.
- against -	:	2020-22059
Detective Daniel Pelan	:	
Tax Registry No. 952099	:	
Warrant Section	:	

At: Police Headquarters
One Police Plaza
New York, NY 10038

Before: Honorable Josh Kleiman
Assistant Deputy Commissioner Trials

APPEARANCES:

For the CCRB-APU: Andre Applewhite, Esq.
Civilian Complaint Review Board
100 Church Street, 10th Floor
New York, NY 10007

For the Respondent: Marissa Gillespie, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

To:

HONORABLE DERMOT F. SHEA
POLICE COMMISSIONER
ONE POLICE PLAZA
NEW YORK, NY 10038

CHARGES AND SPECIFICATIONS

1. Detective Daniel Pelan, on or about June 11, 2019, at approximately 0700 hours, while assigned to the Warrant Section and on-duty, in the vicinity of 229-08 147th Avenue, Queens County, abused his authority as a member of the New York City Police Department, in that he entered [redacted] without sufficient legal authority.
   P.G. 203-10, Page 1, Paragraph 5 — PUBLIC CONTACT – PROHIBITED CONDUCT

2. Detective Daniel Pelan, on or about June 11, 2019, at approximately 0700 hours, while assigned to the Warrant Section and on-duty, in the vicinity of 229-08 147th Avenue, Queens County, abused his authority as a member of the New York City Police Department, in that he searched [redacted] without sufficient legal authority.
   P.G. 203-10, Page 1, Paragraph 5 — PUBLIC CONTACT – PROHIBITED CONDUCT

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on November 15, 2021. Respondent, through his counsel, entered a plea of Guilty to the subject charges and testified in mitigation of the penalty. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review. Having reviewed all of the evidence in this matter, the Tribunal recommends a forfeiture of ten (10) vacation days.

SUMMARY OF EVIDENCE IN MITIGATION

It is uncontested that on June 11, 2019, Respondent arrived at the home of complainant, JM, a retired police officer, to execute an arrest warrant for an absconded parolee, TJ. He did so based on insufficient information that TJ was residing at JM's home.[1] In fact, TJ had not resided

[1] It is well-settled law that absent exigent circumstances a third-person's home may not be breached by a police officer to search for the target of an arrest warrant without first obtaining a search warrant founded on probable cause (*Steagald v United States*, 451 US 204, 205-206 [1981]). Where, however, an officer reasonably believes the target to live within the home and to be present at the time of entry, "an arrest warrant implicitly carries with it the

there for at least four years. Based upon these admissions, Respondent pled guilty to the instant disciplinary charges accusing him of an illegal entry and an illegal search.

At issue is whether the search conducted by Respondent was "prolonged." Pursuant to the Disciplinary Guidelines, a "prolonged" illegal search results in a higher presumptive penalty. At Respondent's mitigation hearing, CCRB claimed that Respondent had remained in JM's home for 15 to 20 minutes and, therefore, had conducted such a search. Respondent claimed that he was only in JM's home for approximately five minutes.

At her CCRB interview, JM, a retired police officer, stated that when Respondent and several other officers knocked on her door, she explained to Respondent that TJ lived in a shelter at Bellevue and had not lived at her house for years. She further explained that she had an order of protection against him. Respondent then walked into her house without permission. She explained to Respondent that he would need a search warrant to enter her home. Respondent showed her the front page of an arrest warrant he had. She explained to him that this was not a search warrant. Respondent then "pushed" past her to go upstairs. JM stated that she observed a second officer in her kitchen opening cabinets.[2] Upstairs, she observed Respondent and two other officers lift up her son's mattress while he was sleeping in the bed to look under it,[3] enter her bedroom, look in two closets, and enter her bathroom. JM stated that in the basement she had another bedroom, a bathroom, a storage closet, and a laundry room. She also had a dog in the basement. She did not go to the basement with the officers. Before leaving, Respondent gave JM

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limited authority to enter for the limited purpose of effecting the arrest" (*Payton v New York*, 445 US 573, 603 [1980]). Here, Respondent entered a third person's home without a search warrant based on an unreasonable belief that the target of the arrest warrant resided there and was then present therein (*see, e.g., People v Smith*, 9 Misc 3d 1105[A], 2005 NY Slip Op 51408[U] [Sup Ct, Bronx County 2005]).

[2] JM described the second officer as "the black guy in the plainclothes" and said "he was the one looking all over the place" (CCRB Ex. 1 at 18). This individual was not identified at Respondent's mitigation hearing. No representations were made to the Tribunal that CCRB took action against any other officer in connection with this incident.

[3] There was no evidence that this act caused or risked any injury to her son.

his business card. She estimated that the officers were in her home for approximately 15-20 minutes. (CCRB Ex. 1 at 7-10, 13-25, 27)

A tenant at JM's home, YL, was also interviewed by CCRB. She stated that she was in the upstairs bedroom, at approximately 7:00 a.m., when she heard the officers knocking. She heard JM "yelling" at the officers and telling them that TJ did not live there. After approximately five to ten minutes, she came downstairs and saw the officers inside the home. She observed an officer push JM to the side to proceed upstairs, but she did not remember what parts of their bodies connected. YL did not see what the officers did in the interior rooms of the house. She further explained that several children were home at the time, two of whom are disabled. One of the children, who was not disabled, an eighteen year old, told her "I can't believe that shit, they picked up my bed, I was there in my bed, they didn't let me get up out of my bed." YL was unable to provide a description of the officers other than their races. YL estimated the officers were in the home for 15 to 20 minutes. (CCRB Ex. 2 at 2-5, 7-11, 13-15, 17-21)

Respondent testified that, as of the incident date, he had been assigned to the Queens Warrants Squad for nearly two years. He claimed that prior to going to JM's home he had conducted "computer investigations" on the subject. He admitted, however, that he had neglected to reflect these database searches in his investigatory reports prior to the search. He further admitted that even without the computer searches he was alerted to the location of JM's home by a parole officer. Respondent explained that JM's home was the "last listed address on [TJ's] file" prior to his four to five year incarceration. (Tr. at 17, 19-20, 27, 30, 40, 47, 54)

Respondent stated that he visited JM's home four days after receiving the arrest warrant. At the door to JM's home, she told him that TJ does not live there and that he lives "in a shelter." Respondent did not recall "if I asked to come in or if she invited myself in." Once inside, he

stated that JM became "loud," and she was "yelling." She told him that he did not have permission to search her home. He explained to her that he had a valid arrest warrant that permitted him to search for TJ. Respondent did not recall which areas of JM's home he searched. Respondent testified that he has since reviewed the law in this area and understands that he should have conducted further investigation in order to form a "reasonable belief that [TJ was] staying there at the time." Respondent estimated that he was inside the home for approximately five minutes. (Tr. at 19-24, 34-38, 48)

The Disciplinary Guidelines provide for a range of penalties associated with an "Unlawful Search/Entry" dependent upon the cause for and/or the extent of the intrusion: (1) an unlawful entry pursuant to a public service/safety function results in a presumptive penalty of Training, (2) an unlawful search/entry involving an officer's incidental or *de minimus* physical presence results in a presumptive penalty of three penalty days, (3) an unlawful search/entry involving a substantial physical presence, including officers remaining on the premises, results in a presumptive penalty of 10 penalty days, and (4) an unlawful search/entry involving a prolonged entry or additional proscribed conduct results in a presumptive penalty of 20 penalty days. I find that in this context the word "prolonged" describes an unlawful entry/search that it is unreasonably protracted, whether in time and/or scope, and involves conduct more egregious than a substantial physical presence of officers.

In closing, CCRB argued that Respondent sought to "minimize his intrusion" and asked: "How can you search an entire house with three floors of an entire home and it be [five][4] minutes?" (Tr. 75) This question implies that the officers would have required more time to search JM's home. Yet, CCRB failed to establish an amount of time that would have been

[4] CCRB first said "three" minutes, but upon clarification that Respondent had said "five" minutes, CCRB stated that its arguments would be the same in either case. (Tr. 77)

reasonable to search JM's home for TJ if such a search would have been legal. While the Tribunal found Respondent's testimony to be largely self-serving and lacking in key details, the Tribunal finds that whether Respondent was in the house for five minutes, or 15 to 20 minutes, neither is alone evidence of whether a prolonged search occurred. While lifting a mattress with a person upon it is concerning to the Tribunal and relevant to this analysis, CCRB made no mention of this allegation at Respondent's mitigation hearing. Furthermore, the hearsay statements submitted to the Tribunal lacked sufficient detail concerning this allegation to alone support an enhanced penalty. There is some evidence that a second officer may have conducted a prolonged search by searching kitchen cabinets and other similar spaces, but there is no evidence that Respondent was aware of, directed, or engaged, in such behavior. Accordingly, given the record before the Tribunal, CCRB has failed to prove by a preponderance of the evidence that a prolonged search occurred warranting an enhanced penalty under the Disciplinary Guidelines.

Respondent's attorney argued that a mitigated penalty should apply because Respondent acted in good faith and possesses a positive employment record. While Respondent has exceptional evaluations and has been submitted for a combat cross for heroic service, he also has relevant prior discipline. In 2015, after a Department trial, he forfeited three (3) vacation days associated with an improper stop. The Tribunal further finds it to be objectively unreasonable for any member of a warrant squad assigned to warrant enforcement to be unfamiliar with well-established legal principles governing the execution of warrants. Accordingly, the Tribunal finds no compelling reason for the application of either a mitigated or aggravated penalty.

Accordingly, in accordance with the Disciplinary Guidelines, the Tribunal recommends that Respondent forfeit ten (10) vacation days to address the instant misconduct.

Respectfully submitted,

Josh Kleiman
Assistant Deputy Commissioner Trials

APPROVED
APR 21 2022
KEECHANT L. SEWELL
POLICE COMMISSIONER

POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials

To: Police Commissioner

Subject: SUMMARY OF EMPLOYMENT RECORD
DETECTIVE DANIEL PELAN
TAX REGISTRY NO. 952099
DISCIPLINARY CASE NO. 2020-22059

Respondent was appointed to the Department on January 9, 2012. On his three most recent performance evaluations, he received a 5.0 overall rating of "Extremely Competent" in 2021, and twice received 4.5 overall ratings of "Extremely Competent/Highly Competent" in 2018 and 2019. He has been awarded 14 medals for Excellent Police Duty and five medals for Meritorious Police Duty.

In 2017, Respondent forfeited three vacation days for stopping an individual without sufficient legal authority.

For your consideration.

Josh Kleiman
Assistant Deputy Commissioner Trials